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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

J.G. et al., Plaintiffs and Appellants, v. POP WARNER LITTLE SCHOLARS, INC., Defendant and Respondent.	E068611 (Super.Ct.No. CIVDS1414096) OPINION

APPEAL from the Superior Court of San Bernardino County. David Cohn, Judge. Affirmed.

Rizio Law Firm, Greg Rizio and Eric Ryanen for Plaintiffs and Appellants.

Wilson Elser Moskowitz Edelman & Dicker and Ian Stewart for Defendant and Respondent.

Plaintiffs and appellants J.G. and A.R. are girls who were sexually abused by an assistant coach of their cheer team. The assistant coach was arrested and convicted of criminal charges arising from the abuse. In this personal injury action, plaintiffs asserted

claims against a number of individuals and organizations, including defendant and respondent Pop Warner Little Scholars, Inc. (Pop Warner), a national governing body for youth football, cheer, and dance programs, including plaintiffs' cheer team.

In this appeal, plaintiffs challenge the trial court's grant of summary judgment in favor of Pop Warner. The trial court was bound by *Doe v. United States Youth Soccer Assn., Inc.* (2017) 8 Cal.App.5th 1118 (*U.S. Youth Soccer*), which held in similar circumstances that the defendants, including a national governing body for youth sports, had a duty to "require and conduct criminal background checks" of "employees and volunteers who had contact with children in their programs," but had no duty to implement a sexual abuse education program. (*Id.* at pp. 1138-1139.) Here, plaintiffs argue that we should "part ways" with *U.S. Youth Soccer*, and find that they demonstrated a triable issue of material fact as to whether Pop Warner "breached its duty of reasonable care when it decided against educating their stake holders how to detect, report and prevent the sexual abuse of the kids in their programs." Plaintiffs also contend that evidence of Pop Warner's "institutional blindness" to the problem of sexual abuse "raises a jury question as to notice of it."

We affirm the judgment.

I. BACKGROUND

Pop Warner is a nonprofit, national governing organization for youth football, cheer, and dance programs. Local organizations, managed and administrated by adult volunteers, agree to adopt and implement rules promulgated by Pop Warner to obtain Pop Warner's "charter recognition." These independently chartered leagues (sometimes

known as "'conferences,'" "'HLAs,'" or "'federations,'") are comprised of "'associations,'" which are "the most local participating organization[s], generally defined by municipal boundaries." Associations are made up of a number of teams, divided by the age of the participants.

In 2010, defendant Kristofer Bland began serving as a volunteer assistant coach of the Pop Warner cheer team that plaintiffs would join in 2013. In accordance with Pop Warner's rules, Bland submitted to a background check before he began coaching. Bland passed; he had no prior criminal convictions.

In 2014, Bland was arrested and, pursuant to a plea bargain, imprisoned for sexually assaulting members of the cheer team, including plaintiffs.[1] In the same year, plaintiffs brought this personal injury lawsuit against, among others, Bland and Pop Warner.[2] Plaintiffs asserted causes of action for sexual battery and battery against Bland, and a negligence cause of action against the other defendants.

Pop Warner filed a motion for summary judgment or, in the alternative, summary adjudication. The trial court granted the motion, finding that the undisputed material facts and governing law established the following: (1) Pop Warner "never received any notice indicating any propensity toward sexual assault or misconduct" by Bland, so it

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[1] Plaintiffs allege that the abuse also continued after the Pop Warner season, during their participation in a cheer team not affiliated with Pop Warner, where Bland also coached.

[2] Other defendants include the head coach of plaintiffs' cheer team, as well as the association and conference of which that team was a part. Only plaintiffs' claim against Pop Warner is at issue in the present appeal.

"cannot have breached any duty in the hiring, supervision, and retention" of him as a cheer coach; (2) there was no evidence of an agency or employment relationship between Pop Warner and Bland or between Pop Warner and the head coach of the cheer team; (3) even if there were an agency relationship between Pop Warner and Bland, Bland's wrongful acts were outside the course and scope of any agency or employment relationship, so there is no basis for "respondeat superior liability"; and (4) Pop Warner "did not have a duty to protect, train, and/or educate minor participants, their parents/guardians, and coaching staffs on how to detect, monitor, and prevent sexual abuse." On that basis, the trial court entered judgment in favor of Pop Warner.

II. DISCUSSION

A. *Standard of Review*

Under Code of Civil Procedure section 437c, subdivision (c), a motion for summary judgment shall be granted if all the papers submitted show there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. A defendant meets its burden on summary judgment by showing that the plaintiff cannot prove its causes of action, or by establishing a complete defense to the plaintiff's causes of action. (*Id.*, § 437c, subd. (p)(2).) The burden then shifts to the plaintiff to show a triable issue of fact material to the causes of action or defense. (*Ibid.*) Claims and theories not supported by admissible evidence do not raise a triable issue. (*Id.*, § 437c, subd. (b)(3).)

We evaluate a summary judgment ruling de novo, independently reviewing the record to determine whether there are any triable issues of material fact. (*Saelzler v.*

Advanced Group 400 (2001) 25 Cal.4th 763, 767.) "In practical effect, we assume the role of a trial court and apply the same rules and standards that govern a trial court's determination of a motion for summary judgment." (*Distefano v. Forester* (2001) 85 Cal.App.4th 1249, 1258.) In general, we give no deference to the trial court's ruling or reasoning, and only decide whether the right result was reached. (*Carnes v. Superior Court* (2005) 126 Cal.App.4th 688, 694.)

B. *Analysis*

1. *Scope of Pop Warner's Duty*

Plaintiffs contend that Pop Warner had a duty not only to require and conduct criminal background checks of volunteer coaches, which it does, but also to educate "their stake holders how to detect, report and prevent the sexual abuse of the kids in their programs." Plaintiffs concede that they are asking that we "part ways with some existing case law," specifically, *U.S. Youth Soccer, supra*, 8 Cal.App.5th 1118. We are not persuaded, however, that we should do so.

Duty "is an essential element" of the tort of negligence. (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 984.) "The determination of duty is primarily a question of law." (*Weirum v. RKO General, Inc.* (1975) 15 Cal.3d 40, 46.) "It is the court's 'expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection.'" (*Ibid.*, quoting Prosser, Law of Torts (4th ed. 1971) pp. 325-326.)

"[A]s a general matter, there is no duty to act to protect others from the conduct of third parties." (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 235.) This general

principle, however, is subject to exceptions, including the "'special relationship' doctrine," pursuant to which "[a] defendant may owe an affirmative duty to protect another from the conduct of third parties if he or she has a 'special relationship' with the other person." (*Ibid.*) "A special relationship exists when 'the plaintiff is particularly vulnerable and dependent upon the defendant who, correspondingly, has some control over the plaintiff's welfare. [Citation.]'" (*U.S. Youth Soccer, supra,* 8 Cal.App.5th at p. 1129.)

Where there is such a special relationship, and the defendant has allegedly failed to aid the plaintiff—sometimes referred to as "nonfeasance," as distinguished from "misfeasance," which is when the defendant is responsible for creating a risk—"courts have balanced the policy factors set forth in [*Rowland v. Christian* (1968) 69 Cal.2d 108 (*Rowland*)] to assist in their determination of the existence and scope of a defendant's duty in a particular case." (*U.S. Youth Soccer, supra*, 8 Cal.App.5th at p. 1128.) These factors include "the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." (*Rowland, supra,* 69 Cal.2d at p. 113.) "Foreseeability and the extent of the burden to the defendant are ordinarily the crucial considerations, but in a given case one or more of the other

Rowland factors may be determinative of the duty analysis." (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213.)

In *U.S. Youth Soccer*, the plaintiff was a minor who was sexually abused by her coach, and the defendants included the national youth soccer organization (US Youth), with which the plaintiff's team was affiliated through its local league and state association. (*U.S. Youth Soccer, supra*, 8 Cal.App.5th at p. 1122.) The Court of Appeal applied the *Rowland* factors and concluded that there was a special relationship between the defendants and the plaintiff: "Since US Youth established the standards under which coaches were hired, US Youth determined which individuals, including [the coach who abused the plaintiff], had custody and supervision of children involved in its programs." (*U.S. Youth Soccer, supra*, at p. 1131.) It further concluded that the scope of the defendants' duty included "require[ing] and conduct[ing] criminal background checks" of "employees and volunteers who had contact with children in their programs." (*Id.* at p. 1138.)

U.S. Youth Soccer reached "a different conclusion," however, with respect to the plaintiff's claim that the defendants had a duty to protect her by "'warn[ing], train[ing], or educat[ing] her (either directly or through her parent or adult employees or team volunteers) about the risk of sex abuse in their programs from their coaches and of its guidelines to protect her and best practices for youth to avoid abuse." (*U.S. Youth Soccer, supra*, 8 Cal.App.5th at p. 1138.) The Court of Appeal found that implementing such a program would be "extraordinarily burdensome" on the defendants. (*Id.* at p. 1139.) Balancing that burden against the level of foreseeability of sexual abuse, it found

the scope of the defendants' duty to protect the plaintiff did not include creating and implementing a sexual abuse education program. (*Ibid*.)

The facts of *U.S. Youth Soccer* are not materially different from those of the present case, and plaintiffs focus on arguing that it was wrongly decided, rather than attempting to distinguish it. Here, as in *U.S. Youth Soccer*, plaintiffs argue that the burden of creating and implementing a sexual abuse education program that would have protected them would have been minimal, perhaps as simple as handing out a brochure or going over guidelines with parents from materials that are "free of cost, widely available, [and] designed to be modified to [suit] the needs of particular youth sports organizations."[3]

We are not persuaded by plaintiffs' argument for several reasons. First, it is entirely speculative as to whether simple steps such as passing out a brochure or going over guidelines with parents would in fact have meaningfully protected plaintiffs or those in similar situations. (See, e.g., *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377, 398) [involving scout sexually abused by troop scoutmaster, despite

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[3] Plaintiffs propose in the alternative that "the scope of the duty owed" by Pop Warner "should reflect the standards declared in the *Protecting Young Victims From Sexual Abuse and Safe Sport Authorization Act of 2017*, PL 115-126, 132 Stat 318." This proposal is unsupported by any reasoned argument, however, as to why it is appropriate to hold Pop Warner accountable to standards developed for, in plaintiffs' description, "athletic programs recognized and governed by the US Olympic committee," or even what those standards might be. We therefore will not discuss plaintiffs' alternative proposal in any detail, and only note that we decline to adopt it on the record and argument presented. (See *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 ["Issues do not have a life of their own: If they are not raised or supported by [substantive] argument or citation to authority, we consider the issues waived."].)

comprehensive program to educate adult volunteers, parents, and scouts].) The head coach of plaintiffs' cheer team agreed in her deposition, with the benefit of hindsight, that "maybe" she would have "taken additional steps" in reaction to parental complaints about Bland's behavior if she had "known of the concept of grooming" at the time. This testimony does not establish, however, that any of the minimal educational steps that Pop Warner might have implemented would have protected plaintiffs from Bland's misconduct.

Second, as explained well in *U.S. Youth Soccer*, the burdens of implementing an educational program regarding sexual abuse are not limited to the cost of obtaining materials: "The subject of sexual abuse of children is a complicated one, and plaintiff's attempt to minimize the burden on defendants is not persuasive. Defendants are sports organizations. Children participate in these organizations to develop their athletic skills and to learn sportsmanship. These organizations are not designed to educate children, their parents, and others regarding the risk of sexual abuse. As US Youth points out, '[T]here are no uniform standards for educating parents and children about the dangers of child predation in youth sports organizations. As such, it would be a daunting task to know at what age children should first be educated about sexual molestation, and to what extent.' Moreover, many parents would consider the education of their children about the risk of sexual abuse to be their responsibility, not that of a youth sports organization." (*U.S. Youth Soccer, supra,* 8 Cal.App.5th at pp. 1138-1139.) Like the Court of Appeal in *U.S. Youth Soccer*, we are not persuaded that the burden on Pop Warner to warn or

educate plaintiffs about the risk of sexual abuse, either directly or through parents, coaches, or other adult employees, would be slight.

We decline plaintiffs' invitation to "part ways" with *U.S. Youth Soccer*, and instead adopt that case's reasoning: "Here, the creation and implementation of a sexual abuse education program to protect children in [Pop Warner's] programs would be extraordinarily burdensome. Balancing this burden against the level of foreseeability of sexual abuse in the present case, we decline to impose a duty on [Pop Warner] to protect children by these means. Nor does consideration of the remaining *Rowland* factors persuade us otherwise." (*U.S. Youth Soccer, supra*, 8 Cal.App.5th at p. 1139.)

2. *Notice*

We do think the situation could be different if facts suggested that Pop Warner had notice that Bland was a danger. In this regard, plaintiffs assert only that evidence of Pop Warner's "institutional blindness" to the problem of sexual abuse "raises a jury question as to notice of it." While plaintiffs' briefing is not clear in this regard, we understand this argument as a challenge to the trial court's finding that Pop Warner "never received any notice indicating any propensity toward sexual assault or misconduct" by Bland, so it "cannot have breached any duty in the hiring, supervision, and retention" of him as a cheer coach. We find no error in the trial court's ruling.[4]

[4] To the extent plaintiffs' discussion of "institutional blindness" is intended to support any other contention, we consider the issue waived for failure to support it with substantive argument and citation to legal authority. (*Jones v. Superior Court*, *supra*, 26 Cal.App.4th at p. 99.)

"[I]n California, an employer can be held liable for negligent hiring if he knows the employee is unfit, or has reason to believe the employee is unfit or fails to use reasonable care to discover the employee's unfitness before hiring him." (*Evan F. v. Hughson United Methodist Church* (1992) 8 Cal.App.4th 828, 843.) "[T]he theory of negligent hiring here encompasses the *particular risk of molestation by an employee* with a history of this specific conduct." (*Id.* at p. 837.) A claim for negligent supervision requires evidence of "knowledge by the principal that the agent or servant was a person who could not be trusted to act properly without being supervised." (*Noble v. Sears, Roebuck & Co.* (1973) 33 Cal.App.3d 654, 664.)

The record is devoid of any evidence that Pop Warner had any information that should have caused it to suspect that Bland had a propensity or disposition to engage in sexual misconduct with children (or anyone else). Plaintiffs cite newspaper articles showing several *other* people with some degree of affiliation with Pop Warner teams, over a period of more than a decade and including some from distant geographic regions, were charged with sexual abuse of minors. And they find fault in the investigation by Pop Warner and its affiliates into Bland's misconduct, conducted after his arrest. But there is no evidence of anything in Bland's background or conduct while coaching plaintiffs' cheer team that was made known to Pop Warner prior to Bland's arrest "that could be deemed a specific warning that [Bland] himself posed an unreasonable risk to minors." (*Juarez v. Boy Scouts of America, Inc.*, *supra*, 81 Cal.App.4th at p. 396.) The lack of such evidence is fatal to a negligent hiring or supervision claim. (*Id.* at pp. 396-

397; see *U.S. Youth Soccer, supra*, 8 Cal.App.5th at p. 1142 [no evidence of "actual or constructive knowledge" that coach's sexual abuse was probable].)

III. DISPOSITION

The judgment is affirmed. Pop Warner is awarded costs on appeal.

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RAPHAEL
J.

We concur:

FIELDS
Acting P. J.

MENETREZ
J.